

GULF OIL CORP.  
REPUBLIC STEEL CORP.

IBLA 84-613     Decided May 31, 1985

Appeal from decision of Eastern States Office, Bureau of Land Management, rejecting application for modification of competitive coal lease. ES-26901.

Affirmed.

1.     Coal Leases and Permits: Leases

In order to be eligible for addition to a coal lease by modification under 30 U.S.C. § 203 (1982), coal lands or coal deposits must be contiguous to or corner on those contained in the base lease. A decision rejecting an application for modification will be affirmed where the coal deposit is not contiguous, i.e., does not have at least one point in common with the coal deposit in the base lease.

APPEARANCES: Jerome H. Simonds, Esq., and John S. Lopatto III, Esq., Washington, D.C., for appellants.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Gulf Oil Corporation and Republic Steel Corporation have appealed from that portion of a decision of the Eastern States Office, Bureau of Land Management (BLM), dated April 26, 1984, rejecting their application for modification of competitive coal lease ES-26901.

Effective February 1, 1982, BLM issued a competitive coal lease for 1,197.50 acres of land (North River Tract) situated in Tuscaloosa County, Alabama, pursuant to section 2 of the Mineral Leasing Act, as amended, 30 U.S.C. § 201 (1982). The lease covered the coal deposits in land which had been patented with a reservation of the coal to the United States. The lease erroneously included 80 acres of land described as the E 1/2 SE 1/4 sec. 13, T. 17 S., R. 10 W., Huntsville Meridian, in which appellants already owned the mineral rights. On December 7, 1982, appellants proposed to BLM to rectify the error by exchanging the coal rights in the aforementioned land for the Federal coal rights in 60 acres of land described as the S 1/2 NE 1/4 NW 1/4, SE 1/4 NW 1/4 sec. 13, T. 17 S., R. 11 W., Huntsville Meridian, pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1716 (1982). On May 16, 1983, appellants proposed, in the

alternative, that BLM modify their coal lease to include 160 acres of land containing Federal coal, in "two isolated blocks," described as the SW 1/4 SW 1/4 sec. 17, T. 17 S., R. 10 W., and the SE 1/4 SW 1/4 sec. 12, E 1/2 NW 1/4 sec. 13, T. 17 S., R. 11 W., Huntsville Meridian, Alabama, pursuant to section 3 of the Mineral Leasing Act, as amended, 30 U.S.C. § 203 (1982).

In its April 1984 decision, BLM cancelled appellants' coal lease as to the erroneously issued land, readjusted the annual rental, and provided for a refund of a prorata portion of the bonus bid and rentals already paid. Further, BLM denied appellants' request for an exchange, concluding that it was not in the public interest. The BLM decision also rejected appellants' request for modification of the coal lease because "the requested lands are not contiguous to already existing leased lands." BLM further stated that if appellants desired to acquire the mineral rights in the S 1/2 NE 1/4 NW 1/4, SE 1/4 NW 1/4 sec. 13, T. 17 S., R. 11 W., Huntsville Meridian, they could apply for a "separate lease," pursuant to 43 CFR 3425.1-4. 1/

In their statement of reasons for appeal, appellants contend that BLM improperly rejected their application for a modification of coal lease ES-26901 where, although there is intervening privately owned land separating the leased land and the land sought to be included in the lease, the underlying coal deposit is continuous. Appellants point out that there is a persistent Pratt coal seam underlying the lease area and the application area. Appellants argue that both section 3 of the Mineral Leasing Act and applicable Departmental regulations permit modification of a lease where the "coal deposits" are contiguous, and that to hold that the surface areas must be contiguous would often rule out modification in the eastern states where the Federal Government, for the most part, owns only the underlying coal in scattered sections. Further, appellants argue that the coal underlying the application area would otherwise not be mined because it is unlikely to be offered for competitive leasing and appellants, who own the surrounding coal and would likely be the only parties interested in mining the coal, would bypass the coal unless it is mined as part of their present operations (North River Mine). Thus, appellants contend that modification promotes the maximum economic recovery of the coal deposit. Appellants do not challenge the April 1984 BLM decision to the extent that it cancelled appellants' lease in part or denied appellants' request for an exchange.

[1] Section 3 of the Mineral Leasing Act, 30 U.S.C. § 203 (1982), provides that the Secretary may approve a modification of a coal lease, "upon a finding by him that it would be in the interest of the United States, \* \* \* by including additional coal lands or coal deposits contiguous or cornering to those embraced in such lease." See 43 CFR 3432.1(a). The term "coal deposits" is defined by the regulations as "all Federally-owned coal deposits, except those held in trust for Indians." 43 CFR 3400.0-5(g).

In Kemmerer Coal Co., 5 IBLA 319 (1972), we concluded that BLM properly rejected an application for modification of a coal lease where the land sought to be included was not "contiguous," as required by the statute and

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1/ The decision was silent as to the availability of this option for the balance of the land sought in the application for lease modification.

Departmental regulations and as that term has been construed by the Department. The Board quoted from Mrs. M. H. Wildermuth, A-27409 (Jan. 30, 1947), to the effect that the term contiguous means "directly 'adjoining' or 'abutting.'" <sup>2/</sup> In Kemmerer, the applicant sought to include land (tract 98) situated 1-1/4 miles from the existing coal lease, all of which was to be mined by the open pit method. The Board stated, further, that regardless of the applicant's contention that it could mine all of the coal "on a more economic basis [this does] not vitiate the fact that its application does not meet the statutory and regulatory criterion of being 'contiguous.'" Kemmerer Coal Co., supra at 322.

Appellants seek to distinguish Kemmerer Coal Co., supra, from the present case on the ground that the former did not involve a continuous coal deposit underlying both the base lease and the tract sought by modification. However, we are unable to accept appellants' attempt to equate a "continuous" coal deposit underlying both the lands in the base lease and the land sought by modification with a "contiguous" coal deposit. As noted by appellants, "contiguous" is defined in the regulations as "having at least one point in common." 43 CFR 3480.0-5(a)(7). Thus, in order to be eligible for inclusion in a modified lease, the coal deposit in the lands sought to be leased must have at least one point in common with the coal deposit embraced in the base lease. Accordingly, the fact that the coal body underlying the separate lease tracts is part of the same deposit is not dispositive of whether the lease deposits are contiguous.

We recognize that there are many instances where the Federal Government owns only the mineral estate. In such instances, it may be appropriate to modify coal leases in accordance with section 3 of the Mineral Leasing Act, to include contiguous coal deposits. However, such deposits, as defined in 43 CFR 3400.0-5(g), must be federally owned. Where Federal coal deposits are separated by an intervening privately owned coal deposit, they simply cannot be considered "contiguous" as that term has been applied to coal land and is, likewise, applicable to coal deposits. That is the situation herein. Appellants indicate, in their statement of reasons at 3-4, that between the lease area and the application area the "intervening coal is controlled by Gulf." This fact is also reflected on a map of the general area submitted by appellants with their application for modification.

Appellants also argue that the coal underlying the application area will be bypassed by their mining operations unless it is mined as the "logical progression of mine operations" at the North River Mine (Affidavit of Arthur B. Sullivan, dated July 18, 1984, Exh. 3 to Appellant's Brief at 1). Although this is a good reason for leasing the subject coal, this does not bring this case within the statutory or regulatory authority of the Department to approve an application for modified lease of the land. However, we discern no reason why appellants cannot file an application for a separate

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<sup>2/</sup> At the time Kemmerer was decided, section 3 of the Mineral Leasing Act, supra, did not permit modification of a coal lease to include coal lands or deposits "cornering" on lands embraced in the lease. The statute was subsequently amended to that effect by section 3 of the Act of Oct. 30, 1978, P.L. 95-554, 92 Stat. 2074.

emergency lease under 43 CFR 3425.1-4, which provides in part that the applicant must show that: "(1) \*  
\* \* (ii) If the coal deposits are not leased, they would be bypassed in the reasonably foreseeable future,  
and if leased, some portion of the tract applied for would be used within 3 years."

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the  
Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.  
Administrative Judge

We concur:

Franklin D. Arness  
Administrative Judge

Will A. Irwin  
Administrative Judge

